

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

SARAH WHARTON

v.

KROGER TEXAS, LP

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§
§

CASE NO. _____
JURY

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Kroger Texas L.P. (incorrectly identified as “Kroger Texas, LP and hereinafter referred to as “Defendant”), while fully reserving all rights and defenses, files this Notice of Removal to the United States District Court for the Southern District of Texas, Galveston Division. Removal is proper under 28 U.S.C. §§1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas, Galveston Division, has original diversity jurisdiction, as it is an action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant would respectfully show as follows:

I. GROUNDS FOR REMOVAL

1. This case is removable to this Court based on diversity jurisdiction under 28 U.S.C. §§1332 and 1441(a).

2. Plaintiff Sarah Wharton (hereinafter referred to as “Plaintiff”) is a citizen of and an individual residing in Brazoria County, Texas.

3. Defendant Kroger Texas L.P. is a limited partnership. KRGP, Inc. is the General Partner of Kroger Texas L.P., and KRLP, Inc. is the Limited Partner of Kroger Texas L.P. Both are organized and existing under the laws of the State of Ohio.

4. As described more fully below, the amount in controversy exceeds the \$75,000.00

jurisdictional limits, excluding interest and costs.

II. PENDING STATE SUIT

5. On January 3, 2023, Plaintiff filed a civil action against Defendant in Cause No. 121052-CV styled *Sarah Wharton v. Kroger Texas, LP* on the docket of the 149th Judicial District Court of Brazoria County, Texas.¹

6. According to Plaintiff's Original Petition, on July 13, 2021, she was purportedly injured at a Kroger store located on Broadway in Pearland, Texas which was allegedly owned, occupied and/or controlled by Defendant.²

7. Plaintiff claims she was injured when she “ was walking through the store, she slipped, landed forcefully on the ground and sustained severe and extensive injuries to her body.”³ As a result of the incident, she allegedly suffered “mental and physical pain and suffering, mental anguish, physical impairment, lost wages in the past, and loss of earning capacity in the future, all of which are in reasonable probability permanent.”⁴

8. The name and address of the Court from which the case is being removed is:

149th Judicial District Court
Brazoria County Courthouse
111 E. Locust St., Suite 500
Angleton, Texas 77515

III. STATE COURT DOCUMENTS

9. The following documents are attached to this Notice of Removal:

Exhibit A Plaintiff's Original Petition and Request for Disclosures

Exhibit B Defendant's Notice of Service

Exhibit C Defendant's Original Answer and Verified Denial

¹ See Plaintiff's Original Petition attached hereto as Exhibit A.

² *Id.* at § V.

³ *Id.*

⁴ *Id.* § VII.

- Exhibit D An index of matters being filed
- D-1 Copy of the state court Docket Sheet/Record
- D-2 Copy of Citations
- D-3 A list of all counsel of record, addresses, telephone numbers, and parties
- D-4 Civil Cover Sheet

IV. TIMING OF REMOVAL

10. Defendant Kroger Texas L.P. was served with Plaintiff's Original Petition through its registered agent for service of process, CSC Corporation Service Company, on January 13, 2023.⁵ Defendant timely filed its answer.⁶

11. This Notice of Removal is being filed within 30 days after receipt of Plaintiff's Original Petition and is timely filed under 28 U.S.C. §1446(b).⁷

V. JURISDICTION

12. Pursuant to 28 U.S.C. §1332, Defendant has the right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

13. Plaintiff's Original Petition asserts that she seeks monetary relief of "over \$1,000,000."⁸ Based on the allegations in Plaintiff's Original Petition, this matter is removable to this Court under 28 U.S.C. §1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

14. Plaintiff also alleges in her Original Petition that she is a resident of Texas.⁹

⁵ See Exhibit B.

⁶ See Exhibit C.

⁷ 28 U.S.C. §1446(b).

⁸ See Exhibit A, § X.

⁹ See Exhibit A at § II.

15. Defendant Kroger Texas L.P. is organized and exists under the laws of the State of Ohio. The following are the partners of Defendant Kroger Texas L.P., all of whom are incorporated in and citizens of the State of Ohio:

- a. KRGP, Inc. is the General Partner of Kroger Texas L.P., KRGP, Inc. is incorporated in the State of Ohio and its principal place of business is in the State of Ohio.
- b. KRLP, Inc. is the Limited Partner of Kroger Texas L.P. KRLP, Inc. is incorporated in the State of Ohio and its principal place of business is in the State of Ohio.

16. Accordingly, there exists complete diversity of citizenship between Plaintiff and Defendant under 28 U.S.C. §1332.

VI. VENUE

17. Pursuant to 28 U.S.C. §1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas, Galveston Division, as it is the federal judicial district that encompasses the 149th Judicial District Court of Brazoria County, Texas, where the state action was originally filed.

VII. NOTICE TO ADVERSE PARTIES AND TO STATE COURT

18. As the removing party, Defendant will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. §1446(d).

19. Defendant will also file a copy of this Notice of Removal with the 149th Judicial District Court of Brazoria County, Texas, where the state court action is currently pending, as required by 28 U.S.C. §1446(d).

VIII. ANSWER

20. Defendant timely filed an answer in the state court action. By removing this action to this Court, Defendant does not waive any defenses, objections, or motions available to

it under state or federal law and will timely file responsive pleadings to Plaintiff's Original Petition in this Court as well.

PRAYER

21. **FOR THESE REASONS** and in conformity with 28 U.S.C. §1446, Defendant respectfully removes the civil action styled Cause No. 121052-CV styled *Sarah Wharton v. Kroger Texas, LP* on the docket of the 149th Judicial District Court of Brazoria County, Texas. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted by,

/s/ Adraon D. Greene

Adraon D. Greene

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 2023, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

Via Email: *jeff@jefftoddlaw.com*

Jeffery N. Todd

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